

June 27, 2007

DECISION AND ORDER
DEPARTMENT OF ENERGY

Implementation of Special Refund Procedures

Names of Firms: Powerine Oil Company
Storey Oil Company, Inc.

Dates of Filing: June 23, 2005
June 23, 2005

Case Numbers: TEF-0006
TEF-0009

The Office of General Counsel (OGC) of the Department of Energy (DOE) filed a Petition requesting that the Office of Hearings and Appeals (OHA) formulate and implement Subpart V special refund proceedings. Under the procedural regulations of the DOE, special refund proceedings may be implemented to refund monies to persons injured by violations of the DOE petroleum price regulations, provided DOE is unable to readily identify such persons or to ascertain the amount of any refund. 10 C.F.R. § 205.280. We have considered OGC's request to formulate refund procedures for the disbursement of monies remitted by Powerine Oil Company (Powerine) and Storey Oil Company (Storey) pursuant to Remedial Orders DOE has issued regarding them and have determined that such procedures are appropriate.

Under the terms of the Remedial Orders, Powerine's bankruptcy trustee has remitted a total of \$1,546,302 to the DOE to remedy motor gasoline retailer-reseller pricing violations which occurred during the relevant audit period. Storey has remitted a total of \$46,599 to remedy similar violations. These funds are being held in an escrow account established with the United States Treasury pending a determination of their proper distribution. This Decision sets forth OHA's plan to distribute those funds. The specific application requirements are detailed in Section III of this Decision.

I. Background

Powerine was a privately held corporation which operated a refinery located in Santa Fe Springs, California during the period of price controls, August 13, 1973 through January 27, 1981. During this period, Storey, operating in Colorado, was a reseller of refined petroleum products. Economic Regulatory Administration audits of Powerine and Storey revealed possible violations of the Mandatory Petroleum Price Regulations (MPPR) in their sales of motor gasoline. Subsequently, OHA issued Remedial Orders in each case directing Powerine and Storey to remit to the DOE

\$7,956,934 and \$64,639 in restitution with respect to overcharges each firm in regard to sales to their customers during the period of price controls. ^{1/}

II. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 C.F.R. Part 205, Subpart V. These procedures apply in situations where the DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

On May 8, 2007, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Consent Order funds. That PD&O was published in the *Federal Register*, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. *See* 72 Fed. Reg. 26083 (May 8, 2007). More than 30 days have elapsed and OHA has received no comments concerning these proposed refund procedures. Consequently, the procedures will be adopted as proposed.

III. Refund Procedures

A. Allocation of Consent Order Funds

Both firms' violations of the MPPR involved sales of a refined petroleum product - motor gasoline. Consequently, all of the funds that have been remitted by Powerine and Storey will be allocated for restitution for those parties injured by the firms' alleged violations of the pricing regulations for motor gasoline.

B. Refined Petroleum Product Refund Procedures

1. Application Requirements

In cases where the ERA is unable to identify parties injured by the alleged overcharges or the specific amounts to which they may be entitled, we normally implement a two-stage refund procedure. In the first stage, those who bought refined petroleum products from the consenting firms may apply for refunds, which are typically calculated on a pro-rata or volumetric basis. In

^{1/} *See Powerine Oil Company*, 21 DOE ¶ 83,008 (1991); *Storey Oil Company, Inc.*, 16 DOE ¶ 83,007 (1987).

order to calculate the volumetric refund amount, the OHA divides the amount of money available for direct restitution by the number of gallons sold by the firm during the price control period covered by the remedial order.

In the present case, however, we lack much of the information that we normally use to provide direct restitution to injured customers of the consenting firms. In particular, we have been unable to obtain any information on the volumes of motor gasoline products sold by the firms during the price control period.

Nor do we have any information concerning the customers of these firms. Based on the present state of the record in these cases, it would be difficult to implement a volumetric refund process. Nevertheless, we will accept any refund claims submitted by persons who purchased motor gasoline from Powerine or Storey during the settlement periods discussed above. We will work with those claimants to develop additional information that would enable us to determine who should receive refunds and in what amounts.

2/

To apply for a refund from the Powerine or Storey Remedial Order funds, a claimant should submit an Application for Refund containing the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, social security number or taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for additional information, and the name and address of the person who should receive any refund check. 3/

(2) A monthly motor gasoline gallonage purchase schedule covering the price control order period. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may

2/ Applications for Refund from will be accepted only for motor gasoline pricing violations. With regard to crude oil pricing violations the deadline for filing applications for refund has passed. *See infra.*

3/ An applicant must submit the social security number or employer identification number of the person or legal entity that is seeking the refund. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 C.F.R. Part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law.

submit estimates of its refined petroleum product purchases, but the estimation method must be reasonable and must be explained;

(3) A statement whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in that refund proceeding. If so, an explanation of the circumstances of the other filing or authorization must be submitted;

(4) If the applicant is or was in any way affiliated with Powerine or Storey, it must explain this affiliation, including the time period in which it was affiliated; 4/

(5) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will made available at OHA.

All applications should be either typed or printed and clearly labeled with the name and case number of the relevant firm (Powerine Oil Company, Case No. TEF-0006 or Storey Oil Company, Inc., Case No. TEF-0009). Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for that information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked on or before December 28, 2007:

4/ As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates of a remedial order firm were not injured by the firm's overcharges. *See, e.g., Marathon Petroleum Co./EMRO Propane Co.*, 15 DOE ¶ 85,288 (1987). This is because the remedial order firm presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. *See Marathon Petroleum Co./Pilot Oil Corp.*, 16 DOE ¶ 85,611 (1987), *amended claim denied*, 17 DOE ¶ 85,291 (1988), *reconsideration denied*, 20 DOE ¶ 85,236 (1990). Furthermore, if an affiliate of the remedial order firm were granted a refund, the remedial order firm would be indirectly compensated from a Remedial Order fund remitted to settle its own alleged violations.

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We will adopt the standard OHA procedures relating to refund applications filed on behalf of applicants by “representatives,” including refund filing services, consulting firms, accountants, and attorneys. *See, e.g., Starks Shell Service*, 23 DOE ¶ 85,017 (1993); *Texaco Inc.*, 20 DOE ¶ 85,147 (1990) (*Texaco*); *Shell Oil Co.*, 18 DOE ¶ 85,492 (1989). We will also require strict compliance with the filing requirements as specified in 10 C.F.R. § 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant. The OHA reiterates its policy to scrutinize applications filed by filing services closely. Applications submitted by a filing service should contain all of the information indicated above.

Finally, the OHA reserves the authority to require additional information from an applicant before granting any refund in these proceedings.

2. Allocation Claims

We may receive claims based upon Powerine’s or Storey’s failure to furnish motor gasoline that they were obliged to supply under the DOE allocation regulations that became effective in January 1974. *See* 10 C.F.R. Part 211. Any such application will be evaluated with reference to the standards set forth in *Texaco* (and cases cited therein). *See Texaco*, 20 DOE at 88,321.

3. Impact of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA) Amendments on Powerine and Storey Refined Product Refund Claims

The Interior and Related Agencies Appropriations Act for FY 1999 amended certain provisions of the Petroleum Overcharge and Distribution and Restitution Act of 1986 (PODRA). These amendments extinguished rights that refund applicants had under PODRA to refunds for overcharges on the purchases of refined petroleum products. They also identified and appropriated a substantial portion of the funds being held by the DOE to pay refund claims (including the funds paid by Powerine and Storey). Congress specified that these funds were to be used to fund other DOE programs. As a result, the petroleum overcharge escrow accounts in the refined product area contain substantially less money than before. In fact they may not contain sufficient funds to pay in full all pending and future refund claims (including those in litigation) if they should all be found to be meritorious. *See Enron Corp./Shelia S. Brown*, 27 DOE ¶ 85,036 at 88,244 (2000) (*Brown*). Congress directed OHA to “assure the amount remaining in escrow to satisfy refined petroleum product claims for direct restitution is allocated equitably among all claimants.” *Omnibus Consolidated and Emergency Supplemental Appropriation Act, 1999*, Pub. L. No. 105-277 § 337, 112 Stat 2681, 2681-295 (1998) (language added to PODRA); *Brown*, 27 DOE at 88,244. In view of this Congressional directive and the limited amount of funds available, it may become necessary

to prorate the funds available for the meritorious claimants in the Powerine and Storey refund proceedings.

It Is Therefore Ordered That:

The payments remitted to the Department of Energy by Powerine Oil Company and Storey Oil Company, Inc., pursuant to remedial orders signed on August 30, 1991 and June 24, 1987 respectively, will be distributed in accordance with the forgoing Decision.

Fred L. Brown
Acting Director
Office of Hearings and Appeals

Date: June 27, 2007

